No. 429

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

BENTON COUNTY, OREGON, ET AL., *Petitioners*,

v.

A. W. LAFFERTY, RICHARD L. MERRICK, and ROBERT B. ANDERSON, Secretary of the Treasury, ET AL., *Respondents*

BRIEF OF A. W. LAFFERTY, PRO SE

A. W. LAFFERTY,
Active Member of the Bar of the Oregon Supreme Court and of this Court,

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WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON 1, D. C.

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BRIEF OF A. W. LAFFERTY, PRO SE

I have carefully read and studied the long, arid, vacuous and scolding petition for Certiorari, as filed by Paul R. Connolly, Esquire, 810 Colorado Building, Washington 5, D. C., Hogan & Hartson, same address, of Counsel.

No Oregon lawyer appears anywhere in the paper filed as having any connection with the move.

Nothing New in Petition

Petition is a rehash of the brief filed by Mr. Connolly in the Court below, its manifold errors and misstatements being answered by me there by my Brief, Pro Se, filed Feb. 13, 1957, and attached hereto as Appendix—C. With others, Mr. Connolly and I argued this matter quite fully before the Court of Appeals Feb. 18, 1957, and the decision in favor of a fee for Mr. Richard L. Merrick and myself followed June 13, 1957.

The decision of the Court of Appeals of June 13, 1957, is in itself a complete and masterful answer to the Certiorari application now lodged here. It is a short opinion, only a few pages. Its

authors, Chief Judge Edgerton and Circuit Judges Prettyman and Wilbur K. Miller knew their subject. They were the panel that decided the original escrow fund suit, involving, as it turned out, over ten million dollars when released in 1955, which case the Court of Appeals and its staff kept under research and advisement for over 5 months.

Print of Assailed Opinion Attached.

Appendix—A

I beg to attach hereto, as Appendix—A the Government print of the short opinion of the Court of Appeals of June 13, 1957, declaring reasonable compensation was due Mr. Merrick and myself for our work in the escrow fund case.

Appendix—B Throws Further Light

Also, the Per Curiam Order of Chief Judge Edgerton and Circuit Judges Prettyman and Wilber K. Miller, in Chambers, Sept. 11, 1957, and my short printed brief in that matter, in which the one paragraph opinion reads as follows:

> "Upon consideration of the motion of appellees Benton County and sixteen other Oregon Counties to recall the judgment and copy of the opinion of this Court from the District Court and to stay reissuance thereof, and of the answer of A. W. Lafferty, it is
>
> "ORDERED by the Court that the aforesaid motion be, and it is hereby, denied."

Appendix—C

In my brief filed in the Court of Appeals Feb. 13, 1957, (Attached as Appendix—C hereof) appears the following:

"STATEMENT

> "This suit, No. 13,353, is inseparably intertwined with suit No. 11,844, recently litigated in this Court. Indeed, the present suit, which is for the declaration of a reasonable fee for Richard L. Merrick and A. W. Lafferty, both Members of the Bar of this Court, who successfully prosecuted suit No. 11,844, must turn upon the "favorable results" to 18 Oregon counties accomplished in

11,844 by the labors of this Court and the work of Merrick and Lafferty as officers of this Court.

"Suit 13,353 is ancillary to suit No. 11,844, a "petition" addressed to this Court under its ancient equity powers to allow its officers, its solicitors, for work done respecting a trust fund, suitable compensation out of the fund, provided "favorable results" were obtained for those entitled to participate, and who do participate, in such "favorable results".

"*Sprague* v. *Ticonic National Bank, 307 U. S. 161.*

"Allowance of such costs in appropriate situations is part of the historic equity jurisdiction of the Federal Courts".

49 A.L.R. 1149:

"The custom of allowing compensation to solicitors out of the fund in court originated, as it appears, in England, in the courts of equity, where costs as between solicitor and client were allowed out of the fund to solicitors of a complainant, on the theory that, where one litigant has proceeded, and at his own expense has created, or preserved, or protected a fund, and others are entitled to claim, and do claim, in the results of his labor, it was not fair that the person who had taken the risk, costs, and expenses of litigation should bear all the costs, but that *those who share in the fruits of it* should bear their fair pro rata share; this rule simply went to the extent that, where *meritorious results* were actually achieved, those who lay by in inaction should not be allowed to await the result, escape all expense in case of loss, but, if the suit proved successful, share the actual benefits by receiving their portion of the fruits of success without contributing their share of the expenses. . . ." (*Underscoring supplied*).

Respectfully submitted,

A. W. LAFFERTY, *Pro Se,*
518 H Street, N. W.,
Washington 1, D. C.

October 5, 1957

N.W.
WASHINGTON 1, D. C.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13353

A. W. LAFFERTY and RICHARD L. MERRICK, APPELLANTS

v.

GEORGE M. HUMPHREY, Secretary of the Treasury, et al., and BENTON COUNTY, Corvallis, Oregon, et al., APPELLEES

Appeal from the United States District Court for the District of Columbia

---

Decided June 13, 1957

Messrs. A. W. Lafferty, Byron N. Scott, and *Donald C. Walker,* of the bar of the Supreme Court of Oregon, *pro hac vice,* by special leave of Court, for appellants.

Mr. Paul R. Connolly for appellee Benton County, Corvallis, Oregon, and certain other appellees. *Mr. Harold S. Harrison,* Attorney, Department of Justice, with whom *Mr. Roger P. Marquis,* Attorney, Department of Justice, was on the brief, for appellee George M. Humphrey, Secretary of the Treasury, and certain other appellees.

Before EDGERTON, Chief Judge, and PRETTYMAN and WILBUR K. MILLER, Circuit Judges.

PRETTYMAN, *Circuit Judge:* This is a suit for a class-action attorney fee. It is another step in a long controversy which began in acts of Congress in 1860-1870. The

facts are recited in some detail in our opinion in *Clackamas County, Ore.* v. *McKay.*[1] They need not be repeated here.

In our opinion and decision in that case we held that acts of Congress in 1916[2] and 1937[3] imposed upon the various executive officials involved a mandatory duty to distribute to the Oregon counties the money accumulated in the special fund designated "The Oregon and California land-grant fund". We ordered a remand for proceedings in accordance with that view. That was on April 30, 1954.

A petition for rehearing was filed, and on June 24, 1954, while the petition was pending, Congress passed an act[4] which, *inter alia,* directed that the funds theretofore derived from the lands and placed in the special fund "shall be disposed of in accordance with the provisions of title II of the Act approved August 28, 1937 (50 Stat. 874) as hereby amended".

In the presentation to the Congress of the bill which became the act, it was made abundantly clear that the decision of this court had settled the question of the status of the disputed lands but that the court did not attempt to decide the question of jurisdiction for management purposes as between the Department of the Interior and the Department of Agriculture. The distribution of the funds depended upon the former question; if the lands were "O & C" lands the funds belonged in part to the counties, no matter what Department had management of them. The act did not purport to change the court's decision. It effected exactly what the court ordered, distribution of the funds pursuant to the 1937 act, and it

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[1] 94 U.S. App. D.C. 108, 219 F.2d 479 (1954).

[2] 39 STAT. 218.

[3] 50 STAT. 874.

[4] 68 STAT. 270, 43 U.S.C.A. § 1181g.

decided the dispute as to management, a matter concerning which the court had said nothing.

The legislative history of the 1954 act clearly shows the intention behind it. Senator Cordon, who sponsored the bill, told the Senate:

> "Mr. President, the purpose of the bill is to determine legislatively a jurisdictional question which has existed between the Department of Agriculture and the Department of the Interior for many, many years. * * *
>
> * * * *
>
> "The question of the character and class of the lands reached the courts in 1925, in a suit brought by the Government against the railroad company for an accounting in connection with the revestment and the reciprocal obligation of the Government and the company. In that case the determination of the Court was that the 472,000 acres were revested O. & C. grant lands.
>
> "However, the Court did not attempt to make any determination with respect to the administration of the 472,000 acres in question. That issue was not properly before the Court. There is a series of decisions with respect to the legal status of the lands. The latest decision was rendered only a couple of weeks ago—on April 30, 1954—in the United States Circuit Court of Appeals for the District of Columbia. All decisions have been uniform with respect to the law and its applicability to these lands.
>
> "However, there has remained the question of jurisdiction for management purposes. * * *
>
> * * * *
>
> "Because of the fact that there is a distribution of funds from the O. & C. Railroad lands to local governmental units much greater than the distribution to local units in the case of Forest Service lands, the question of the legal character of the 472,000 acres is of great importance to the people of Oregon. *The courts have determined that question.* * * *
>
> "This bill meets the overall situation by providing that the 472,000 controverted acres are declared to

be revested O. & C. lands. This is precisely what the Court declared them to be.

• • • •

"Thus, the bill, S. 2225, takes care of both the administrative question and the jurisdictional one as far as the 472,000 acres are concerned."[5] (Emphasis supplied.)

When the bill reached the floor of the House the following colloquy occurred:

"Mr. WICKERSHAM. Mr. Speaker, reserving the right to object, and I make this reservation at the request of two of our former colleagues, I would like to ask the gentleman from Oregon [Mr. Ellsworth] a question. This measure is a followup and confirms a decision of the District of Columbia Circuit of the United States Court of Appeals on April 30, 1954, in which action A. W. Lafferty, a former Member of Congress, represented Clackamos [*sic*] County, Oreg., and others and won the decision. Is this correct?

"Mr. ELLSWORTH. That is correct.

• • • •

"Mr. WICKERSHAM. Is it a fact that this bill confirms the decision of the court of appeals which directed the payment of $7 million or $8 million to 18 Oregon counties, including Clackamos [*sic*] County, all of which 18 counties thereby benefiting by the action instituted by A. W. Lafferty, as attorney, and benefited from the said court decision? This is correct, is it not?

"Mr. ELLSWORTH. That is correct."[6]

On October 21, 1954, the petition for rehearing was denied in this court, and our mandate issued. We noted that as of that time no statement had been made that the Secretaries had distributed the funds.

On February 17, 1955, the Government applied to the Supreme Court for a writ of certiorari, saying that the

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[5] 100 CONG. REC. 6886 (1954).

[6] 100 CONG. REC. 7969 (1954).

Secretary of Agriculture had by that time, pursuant to the new act, transferred the funds to the Secretary of the Interior and he in turn had distributed to the counties the parts of the accumulated funds due them, retaining a substantial sum on account of the present proceeding. The Government officials now stand neutral in the matter.

On April 18, 1955, the Supreme Court granted certiorari, vacated our judgment, and remanded the case with directions to dismiss as moot.[7]

Our present appellants, Lafferty and Merrick, are the lawyers who conducted the lawsuit above discussed. They filed an action for attorney fees, naming the Secretaries defendants, as stakeholders of the fund, and the Oregon counties as the debtor defendants. The defendant counties, with the exception of Clackamas County, moved for summary judgment on two grounds: (1) that these lawyers' efforts to bring about a distribution of the funds had been unsuccessful and (2) that the lawyers had not been retained by movants. The District Court granted the motion.

Two questions are before us. The first is whether the lawsuit conducted by these appellant lawyers resulted in benefit to the counties. To say that it did not result in such a benefit seems to us little more than a play on words. Many efforts had been made prior to 1954 to persuade Congress to settle the controversy specifically and to direct the payment of the funds to the counties. None had succeeded. As the *Congressional Record* shows, when the bill came before Congress in 1954 the members were told specifically and emphatically that this court had settled the legal character of the lands, and in the House they were told that the bill "confirms" the decision of this court. The act finally adopted directed payment pursuant to the 1937 statute, which is what this court had ordered.

---

[7] 349 U.S. 909, 99 L.Ed. 1244, 75 S.Ct. 599.

If we thought Congress intended to divest a court decree of effectiveness after it had been validly rendered by a court of competent jurisdiction, we would have a serious question as to the validity of the congressional act. But clearly Congress had no such intention. Quite the contrary, it accepted the court decision as settling the controversy as to the nature of the lands and went on from there to prescribe the future management.

To say that the action was unsuccessful because pending certiorari the Government paid over the money which was the sole subject of the litigation, seems to us to be another play on words. A party does not nullify a court order by complying with it.

Thus we are of clear opinion that the lawyers who conducted the litigation performed services which were of value and achieved substantial benefits for the counties.

Upon the second point, that only Clackamas County engaged these lawyers, *Sprague* v. *Ticonic Bank*[8] is dispositive. In the case at bar there was a definite, earmarked fund. The litigation resulted in a substantial benefit to all the counties. They all participated in the distribution. The complaint was brought by Clackamas County on behalf of itself and the other counties.

It was said by the Government in its petition for certiorari in the Supreme Court in 1955 that the amendment of the 1937 act contained in the 1954 act resulted in "different payments to the counties under the 1954 Act than under the provisions of the 1937 Act." The amendment may have resulted in different payments to the *respective* counties, but it in no way affected, even by a penny, the total amount payable to all the counties. The lawsuit was to determine whether the whole sum was payable to all the counties. What portion each

[8] 307 U.S. 161, 83 L.Ed. 1184, 59 S.Ct. 777 (1939).

county would get was not involved. The service rendered by these attorneys was in respect to the whole fund as payable to all of the counties. The formula for distribution among the several counties had nothing to do with their services.

The judgment of the District Court will be reversed and the case remanded for the determination of the proper amounts of fees to be paid these appellant lawyers from the fund retained in the hands of the Government.

Reversed and remanded.

MEMORANDUM AND SUGGESTIONS OF A. W. LAFFERTY, ONE OF APPELLANTS, OPPOSING ALLOWANCE OF "MOTION TO RECALL JUDGMENT AND CERTIFIED COPY OF OPINION" UNTIL AND INCLUDING SEPTEMBER 11, 1957

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,353

A. W. LAFFERTY and RICHARD L. MERRICK, *Appellants,*

v.

GEORGE M. HUMPHREY, Secretary of the Treasury, FRED A. SEATON, Secretary of The Interior, EZRA TAFT BENSON, Secretary of Agriculture, et al

Appellees

A. W. LAFFERTY, *Pro Se,*
Member of the Bar of the Oregon Supreme Court and of this Court,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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GEORGE M. HUMPHREY, Secretary of the Treasury, FRED A. SEATON, Secretary of The Interior, EZRA TAFT BENSON, Secretary of Agriculture, et al

Appellees

MEMORANDUM AND SUGGESTIONS OF A. W. LAFFERTY, ONE OF APPELLANTS, RESISTING ALLOWANCE OF "MOTION TO RECALL JUDGMENT AND CERTIFIED COPY OF OPINION" UNTIL AND INCLUDING SEPTEMBER 11, 1957, AS BEING DILATORY, OPPRESSIVE, AND UNNECESSARY TO ITS DECLARED OBJECTIVE.

Point I.

Appellant A. W. Lafferty is in his 83rd year; has been an active member of the bar for over 60 years; for past seven years has worked almost continuously on the O & C land litigation involved in this proceeding, in U. S. District Court of Oregon and Federal Courts in Washington, D. C., and on other phases of the O & C Land litigation has devoted much of his time since September 16, 1907.

Point II.

Mr. Connolly's motion seeks to "recall the judgment of this Court of June 13, 1957, and the certified copy

of this Court's opinion of that date which was sent to the District Court July 1, 1957."

Under the facts, if certiorari is to be petitioned for, such action should be taken promptly. Appellant lawyers, for whom the right of reasonable fee has been declared by this Court, have not the slightest thought of moving for judgment in District Court fixing the amount of their fees until Appellees, represented by Mr. Connolly, have had all the time allowed by law, if they choose to take it, to petition for certiorari, though fair play would seem to dictate that such petition be filed in the immediate future if it is to be filed at all.

Point III.

The "recall and stay" maneuver asked for by Mr. Connolly's motion "until and including Sept. 11, 1957", if granted by the Court, might conceiveably work public sentiment injury to the cause of Appellant lawyers in Oregon by creating the false impression there that this Court had receded from its judgment of June 13, 1957, when that would not be the case at all.

IF THERE IS TO BE ANY "RECALL" BY THIS COURT OF ITS DECISION OF JUNE 13, IT SHOULD BE TO ENABLE THIS COURT TO FIX REASONABLE ATTORNEYS' FEES HEREIN, FOR THIS COURT KNOWS THE FACTS AND NO OTHER COURT DOES.

It is now over three years since this Court on April 30, 1954 (after holding the matter under investigation and research for over five months) rendered its memorable decision in favor of the 18 O & C Counties.

The present fee suit, based thereon, itself was filed in June, 1954, and has been pending over three years. The personnel of some of the 18 Oregon County Courts

have completely changed. Some of the important witnesses have moved, others have died. To delay this case further would be hazardous to this appellant's rights.

The present fee suit came on for hearing before Judge McGarraghy, in District Court, early in 1956. On appeal to this Court, and after full argument, briefing, and consideration of the fee matter for a period of four months by this Court, another opinion marked by its clarity, and mastery of all the intricacies of the litigation, was handed down in favor of reasonable attorneys' fees. Now, Mr. Connolly wants to upset that decision.

It would be poetic justice if this Court should recall the whole matter from District Court, but only for the purpose of spelling out a specific amount which would constitute reasonable attorneys' fees herein, *as it has the power to do.*

No Testimony Necessary Where Services Performed in Presence of Court

Where attorneys seek to recover fees for services rendered in presence of the court, no testimony need be offered as to their reasonable value, since the court itself is competent to pass upon the question of reasonable value of such services. *Mill City Plastics,* 129 Fed. Supp. 86, followed *Northtown Theatre Corp.* v. *Nickelsen,* 226 F 2d 212.

Determination of fees of counsel for successful plaintiff in a class action involves consideration whether attorney's compensation is contingent upon recovery, the amount of effort *necessarily expended* to meet and solve any novel and complicated problems involved, the standing and reputation for excellence of the attorneys and their associate counsel, and the excellent work and standing of opposing counsel—*Paris* v. *Metropolitan Ins. Co.* 94 Fed. Supp. 356.

It would seem incongruous that this Court, knowing the services rendered before it, should be compelled by any arbitrary rule of practice, to remit such a complicated case as this to *any court*, other than *itself*, for the purpose of fixing appropriate attorneys' fees. I AM WILLING TO ACCEPT ANY FEE THIS COURT OF APPEALS MAY FIX. But I would hope to get it before I drop. Like the citizen, no attorney or set of attorneys is, or should be permitted to be, above the law. And this Court has buttressed that principle in this litigation.

The opposition is compelling this Appellant to spend as much time, and perform as much labor, to collect his fee, as he spent in winning the original class-action for the benefit of the 18 Oregon Counties.

IN ILLINOIS CASE RECENTLY DECIDED SUPERIOR COURT JUDGE FISHER ALLOWED A FEE OF 1½ MILLION DOLLARS TO ATTORNEY LOUCKS IN A TEN MILLION DOLLAR TRUST FUND CASE

The following press report was published on page 7 of The Oregonian, Portland, Oregon, March 5, 1957:

"COURT OKEHS LEGAL FEE"

"Chicago (AP)—Legal fees totaling nearly $2,000,000—including one for $1,500,000—were approved Monday in a court fight over a $10,000,000 estate.

"Superior Judge George M. Fisher granted the $1,902,822 for six attorneys and a trust firm engaged in a ten-year contest over the estate of Mollie Netcher Newbury. Mrs. Newbury's first husband, Charles Netcher, Sr., was founder of the Boston store in Chicago's loop.

"The estate battle ended September 24 last year when Judge Fisher ordered Mrs. Mollie Netcher Bragno, granddaughter of Mrs. Newbury, to turn back $16,728,742 inherited from Mrs. Netcher to the principal trust estate of the senior Netcher.

"Will Terms Violated"

"The court found that Mrs. Newbury had violated the terms of her husband's will and failed to fulfill her duties as trustee of her estate.

"In a settlement agreement, Mrs. Bragno surrendered $10,500,000 to the Netcher estate, which eventually will be shared by Mrs. Bragno and Mrs. Francice Netcher Bushkin, another granddaughter of the Boston store founder.

"The largest fee approved was $1,500,000 for attorney Vernon Loucks, who also received $61,000 reimbursement for expenses. Loucks represented Mrs. Bushkin and her mother, Mrs. Ethel Chagnon."

Amount Involved in Illinois Case Virtually Same as in Case at Bar

The Oregon land grant trust fund turned out to be over $10,000,000, and the motion filed for summary judgment (J.A. 19), if allowed for $600,000 would equal a fee of less than 3 per cent for each of Appellant lawyers, whereas Mr. Loucks was allowed a fee of $1,500,000, plus expenses, in the Chicago case where the total trust fund involved was virtually the same as in the case at bar, with this important exception, in favor of the case at bar: The 18 Oregon Counties not only received 75 per cent of the fund of over $10,000,000 which had *accrued, but they got the 472,000 acres of controverted land back, as acknowledged O & C lands,* which will give annual benefits to the 18 Counties for all the long future.

CONCLUSION

Upon the showing herein made, Appellant A. W. Lafferty, now prays the Court:

1. To disallow Mr. Connolly's motion to recall and stay the judgment of this Court of June 13, 1957.

2. Or, in the alternative, if any action be taken, that it be an Order of this Court, of its own motion, recall-

ing its decision of June 13, 1957, for the purpose of modifying its decision of that date, by designating specific amounts as reasonable attorneys' fees for each of the two appellant lawyers.

Respectfully submitted,

A. W. LAFFERTY, *Pro Se*

JAMES P. KEM
Of Counsel:

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum, Suggestions, and Brief, of A. W. Lafferty, Pro Se, was mailed this 20th day of July, 1957, to Byron N. Scott, Esquire, Attorney for Richard L. Merrick, Wyatt Building, Washington 5, D. C., to Perry W. Morton, Assistant Attorney General, Department of Justice, Washington, D. C., Attorney for Appellees George M. Humphrey, Fred A. Seaton, and Ezra Taft Benson, and to Paul R. Connolly, 810 Colorado Building, Washington 5, D. C., who signed the Motion herein replied to as "Attorney for Appellees Benton County, et al."

A. W. LAFFERTY,
518 H Street, N. W.
Washington 1, D. C.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,353 April Term, 1957

A. W. Lafferty,
Richard L. Merrick,

Appellants,

v.

Robert T. Anderson, Secretary of the Treasury, et al., and Benton County, Corvallis, Oregon, et al.,

Appellees.

United States Court of Appeals
For the
District of Columbia Circuit
FILED SEP 11 1957
Joseph W. Stewart
CLERK

Before: Edgerton, Chief Judge, Prettyman and Wilbur K. Miller, Circuit Judges,

in Chambers.

ORDER

Upon consideration of the motion of appellees Benton County and sixteen other Oregon Counties to recall the judgment and copy of the opinion of this Court from the District Court and to stay reissuance thereof, and of the answer of appellant A. W. Lafferty, it is

ORDERED by the Court that the aforesaid motion be, and it is hereby, denied.

Per Curiam.

Dated: September 11 1957



MOTION OF A. W. LAFFERTY, ONE OF APPELLANTS, FOR ENLARGEMENT OF ORAL ARGUMENT TIME FOR ALL PARTIES, AND FOR LEAVE TO FILE BACKGROUND MATERIAL HERETO ATTACHED WHICH WAS SERVED UPON ALL COUNSEL OF RECORD JANUARY 30, 1957

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,353

A. W. LAFFERTY and RICHARD L. MERRICK,
Appellants

v.

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Appellees.

Appeal from the United States District Court for the District of Columbia

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United States Court of Appeals

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Appellees.

Appeal from the United States District Court for the District of Columbia

---

MOTION OF A. W. Lafferty, Pro Se, one of Appellants for enlargement of the time for oral argument beyond 45 minutes to each side, and for leave to file the background material, submitted herewith, which was served upon all counsel of record January 30, 1957

Comes now A. W. Lafferty, Pro Se, co-appellant, and for the reasons herein shown, requests and respectfully moves the Court as follows:

1. That the time for oral argument be enlarged beyond 45 minutes to each side.

2. For leave to file the background material, 26 copies, submitted herewith, which material was served upon all counsel of record January 30, 1957.

STATEMENT

This suit, No. 13,353, is inseparably intertwined with suit No. 11,844, recently litigated in this Court. Indeed, the present suit, which is for the declaration of a reasonable fee for Richard L. Merrick and A. W. Lafferty, both Members of the Bar of this Court, who successfully prosecuted suit No. 11,844, must turn upon the "favorable results" to 18 Oregon counties accomplished in 11,844 by the labors of this Court and the work of Merrick and Lafferty as officers of this Court.

Suit 13,353 is ancillary to suit No. 11,844, a "petition" addressed to this Court under its ancient equity powers to allow its officers, its solicitors, for work done respecting a trust fund, suitable compensation out of the fund, provided "favorable results" were obtained for those entitled to participate, and who do participate, in such "favorable results".

Sprague v. *Ticonic National Bank*, *307 U. S. 161:*

> "Allowance of such costs in appropriate situations is part of the historic equity jurisdiction of the Federal Courts".

49 A.L.R., 1149:

> "The custom of allowing compensation to solicitors out of the fund in court originated, as it appears, in England, in the courts of equity, where costs as between solicitor and client were allowed out of the fund to solicitors of a complainant, on the theory that, where one litigant has proceeded, and at his owr expense has created, or preserved, or protected a fund, and others are entitled to claim, and do claim, in the results of his labor, it was not fair that the

person who had taken the risk, costs, and expenses of litigation should bear all the costs, but that *those who share in the fruits of it* should bear their fair pro rata share; this rule simply went to the extent that, where *meritorious results* were actually achieved, those who lay by an inaction should not be allowed to await the result, escape all expense in case of loss, but, if the suit proved successful, share the actual benefits by receiving their portion of the fruits of success without contributing their share of the expenses. . . ." (*Underscoring supplied*).

Government Has Consented to Present Suit For Declaration of Suitable Fee

The following document, which is virtual consent of the Government that the present suit be entertained by this Court, and certainly reflecting the opinion of high Federal officials that a suitable fee might amount to $600,000 is on File in the Treasury Department, Department of the Interior, Department of Agriculture and Department of Justice:

"INTERDEPARTMENTAL UNDERSTANDING OF SEPTEMBER 22, 1954

"IT IS HEREBY AGREED, that,

"1. Pursuant to the request of the Department of Justice by letter dated July 12, 1954, to Department of Agriculture, $600,000.00 will be retained in special deposit account until such time as the A. W. Lafferty, et al., v. George M. Humphrey, et al., CIVIL No. 2561-54, case is adjudicated. (*Note: 2561-54 is present 13,353 on Appeal*).

"2. In accordance with an informal request of Aug. 18, 1954, (confirmed by letter of Aug. 20, 1954) by the Department of Justice to the office of the Solicitor, Department of Agriculture, the full amount now in the special deposit account ($7,695,498.12) as of June 30, 1954, will be retained until such time as the Clackamas County, Oregon vs. Douglas McKay et al, No. 11844, case is *adjudicated*.

"3. On advice of the Department of Justice that the Clackamas case has been *adjudicated* the Forest Service will transfer to the Bureau of Land Management for disposition in accordance with Public Law 426—83d Congress, 2d Session, the sum of $7,695,498.12, or such other amount as is not requested by the Department of Justice to be retained or is not otherwise provided by the *decree*.

"Signed, this the 22d day of September, 1954.

BUREAU OF LAND MANAGEMENT,
DEPARTMENT OF INTERIOR,

By Depue Falc
Title Executive Officer

BUREAU OF FOREST SERVICE,
DEPARTMENT OF AGRICULTURE,

By Howard Hopkins
Title Acting Chief."

Printed Record Now Before This Court on Appeal good as far as it Goes, but Lean

The foregoing "Agreement", and many other public documents relevant to the present Appeal, 13353, of which this Court may properly take judicial notice, and is entitled to have called to its attention, have been gathered together and arranged in proper order in a huge "binder", by A. W. Lafferty, which he will bring to Court February 18, 1957, and will desire to refer to numerous of such documents. Hence, and for other cogent reasons, hereinafter to appear, the time for oral argument should be generously enlarged. By the same token leave to file the background material, as requested in this motion, should be allowed.

EVEN ON PRESENT LEAN RECORD LOWER COURT SHOULD BE REVERSED AND DIRECTED TO ALLOW APPELLANTS' COUNTER MOTION (PENDING BELOW) FOR A SUMMARY JUDGMENT IN THEIR FAVOR, AND IN THE SUM OF $600,000, HALF THEREOF TO EACH OF THE TWO APPELLANTS.

The fee asked of $600,000 for the two attorneys, one in Oregon, and the other in Washington, D. C., amounts to but a fraction over six per cent of the escrow fund which had *accrued* as of June 30, 1954, which amount was over nine million dollars.

True, the amount *actually in* the fund June 30, 1954, was $7,695,498.12, but that only included income from sales up to June 30, 1953. It requires several months after the end of any fiscal year to audit and pay into the fund the sales for such year. So, the sales for fiscal year ending June 30, 1954, were not in the fund till November, 1954, when the amount was swelled to upwards of *nine million dollars*. See the audit of November, 1954, attached to my affidavit in Judge Holtzoff's court December, 1954, on motion for judgment on the Mandate of this Court of November, 1954. (No. 11844 in Court of Appeals was No. 5852-52 in U. S. District Court).

So, at the lowest figure, over nine million dollars was actually in the disputed fund, the escrow fund, when Public Law 426 was signed June 24, 1954, and when Appellants' Fee Suit, No. 13353, now before this Court was filed June 15, 1954.

The 18 Oregon County beneficiaries have now actually received in hand all of that sum in excess of nine million dollars, save and except $800,000 still held back on request of the Attorney General to await the outcome of suit 13,353 now before this Court, and other O & C litigation pending in the Court below, specifically suit 175-55,

filed in January 1955, by Hogan and Hartson, and Frank S. Sever, as attorneys for the same "17 Counties" said attorneys, represent as "defendants" in the case at bar, to have a fee declared for Merrick and Lafferty, in successful suit (11844 in this Court) which resolved the long Departmental dispute over a controverted fund of over nine million dollars, which has now been distributed to 18 Oregon Counties, except for the $800,000 before mentioned.

To Pin-Point the Present Picture

1. The original Clackamas County suit (11844 in this Court) to resolve the dispute over the controverted fund, and require distribution of it under the McNary Act of 1937 (which is still the distributive Act) was first brought in the U. S. District Court of Oregon, at Portland, in May 1952. Dismissed on venue grounds November 1952, the same Complaint, word for word, was re-filed in U. S. District Court here in November, 1952, was argued before Judge Holtzoff May 20, 1953, before this Court of Appeals November 1953, and decided in favor of the 18 Oregon Counties (it having been a class action as declared in the Complaint) and as it turned out to be. The decision of this Court was handed down April 30, 1954.

2. Subsequent to that favorable decision, Pub. Law 426 was passed which likewise directed that the controverted fund be distributed under the McNary Act, of 1937, and to all intents and purposes directed distribution exactly as this Court had determined the fund should be distributed.

3. For some reason, hard to fathom, 17 Oregon Counties, under the lead of the so-called "O & C County Association", a private organization, and not the 17 Oregon County Courts of said counties, opposed the carrying out of the April 30, 1954 favorable decision of this Court of Appeals which was to their benefit, but fought it tooth

and nail with dilatory motions and other maneuvers, all of which were rebuffed by this Court, both in Panel and In Banc. (See the Record of 11844).

4. Finally, to cap the climax, in January, 1955, the "O & C County Association" caused to be initiated in the District Court here (still pending, 175-55) a suit almost identical with the original Clackamas County suit, and asking for the same identical relief, distribution under the McNary Act of 1937. The Complaint in 175-55 said that Secretary McKay and the Forestry officials had been "confused and confounded" by the decision of this Court of Appeals! See that remarkable complaint. So they wanted a fresh decree, providing for the same identical relief, but in their name, in the name of the "O & C County Association".

Affidavits Favorable to Appellant Lafferty in Court Below, not included in Joint Appendix, Should be Considered by this Court

I have in my "binder" photostatic copies of the omitted affidavits made for me by the photostat room of the U.S. District Court in this Building. Why they were omitted from the Joint Appendix on Appeal I do not know. In my view it was unfortunate that they were omitted. Each affidavit bears the following stamp: "Filed Feb 11 1956, Harry M. Hull, Clerk".

I beg to quote here briefly from some of said affidavits:

1. HOMER D. ANGELL, 16 years Member of Congress from Oregon, from 1939 to 1955:

> ". . . I have known Mr. Lafferty personally for half a century and as a colleague of the Oregon State Bar. That Mr. Lafferty was a Member of Congress from the Second and Third Congressional Districts of Oregon from 1911 to 1915 and that I have personal knowledge of his efforts in the Oregon and California land grant controversy and that he has

spent considerable years in making a thorough study and has on different occasions represented a litigant in establishing certain principles in the long and complex controversy. Mr. Lafferty, both as a lawyer for Clackamas County and as a public citizen, has done a great deal to enlighten the people of Oregon as to the Oregon and California land grant controversy and has done a great deal through the law suit involving Clackamas County to alert the people of Oregon and the members of Congress to the issues involved".

2. ROBERT B. JONES, who was one of the Clackamas County Commissioners when Lafferty was retained in 1952:

"That Mr. Lafferty was retained on a very meager basis by Clackamas County, receiving $200.00 a month for expenses, and we anticipated that his fee would be awarded by the Court at the successful conclusion of the case. . . . That in my opinion A. W. Lafferty is entitled to a substantial fee from the fund that was preserved and paid to the eighteen Oregon counties".

3. DARRELL JONES, presently a County Commissioner of Clackamas County:

". . . That from my personal knowledge Mr. Lafferty has spent long and tedious hours in the preparation of Clackamas County's law suit against the Secretaries, not only on behalf of Clackamas County but for the benefit of the entire eighteen Oregon counties that were involved in the Oregon and California land grant controversy. That I have spent many hours with Mr. Lafferty and know that he has spent most of his time for many months in the preparation and prosecution of Clackamas County's law suit. . . . I can heartily recommend that Mr. Lafferty be paid a substantial fee out of the fund . . . which was later distributed under Public Law 426 which parallels and confirms the earlier Court decision and was so testified to by a Member of the Oregon delegation in Congress".

(County Judge Wallace R. Telford and County Commissioner Stanley Skoko, of Clackamas County Board of Commissioners, made similar affidavits, similarly Filed as above).

4. MERVIN SHOEMAKER, the political writer for the Portland Oregonian:

> "That I am well acquainted with the plaintiffs in this suit, and particularly A. W. Lafferty, and that I am well acquainted with his efforts in the prosecution of the law suit of Clackamas County. . . . That to my own knowledge I know that the plaintiffs, and particularly A. W. Lafferty, have through the years been dedicated completely to a successful result for the eighteen Oregon counties in the controversial land grant problem".

Besides the foregoing convincing local testimony, my own affidavit, dictated over a year ago by me in Mr. Donald C. Walker's law office in Portland, Oregon, is omitted from the Joint Appendix, except in expurgated and almost meaningless form. I shall ask indulgence of the Court to read my own complete affidavit to the Court at the oral argument, February 18, 1957, as it was Filed Feb. 11, 1956. But I shall, as I always do, defer to the wishes of the Court next Monday, as to how much time, if any, I shall consume, and what angles I shall discuss, if any. The convenience of the Court, and its desires will be my guide. The Court may be ready to rule on this case, and from its own knowledge.

Again, As to Suitable Fee for Merrick and Lafferty

Hon. Byron N. Scott, of the local bar, and Mr. Donald C. Walker, partner in the Portland, Oregon, law firm of Crum, Walker and Buss, appeared for Mr. Merrick and myself in the Court below, although the original suit for fee was brought much earlier by Mr. Merrick, and Merrick wrote the original Complaint for himself and myself. Scott and Walker came in much later.

I have just received a letter from Mr. Walker that he will arrive here at Mayflower Hotel, for Monday's hearing. He has previously told me his expenses here a year ago, of three weeks or more, all told were near $1,000. Mr. Walker also, a year ago suggested I agree to pay my attorneys in this case a fee of 40 per cent of the recovery, and he showed me the printed fee schedules of the Oregon State Bar, which would make such a fee reasonable in ordinary, run-of-the-mill cases taken on a contingent basis.

I countered that if I win I will not haggle over paying any reasonable bill for fee and out-of-pocket expenses Mr. Walker may present, and I will, and the same goes for Mr. Scott. Mr. Scott has just written me that he will present his bill, if I win. It will be paid, of course, out of the recovery.

Now, as previously stated, if this Court declares a suitable fee for Merrick and myself at $600,000, as asked in the Complaint, upon which a motion for summary judgment in our favor is pending in the Court below (See Joint Appendix, p. 19) that would be approximately a gross fee to each of us of 3 per cent of the nine million dollar trust fund, the dispute as to which was resolved in the suit prosecuted by us successfully, and with "meritorious results" to the 18 Counties. Out of that we would have to pay our own attorneys, and income taxes would take a major portion of the remainder. Concluding, as to this point, Pro Se, I regard the fee of $600,000 reasonable, the law plain, and the evidence adequate for an immediate decision.

Secretaries Humphrey, Seaton, and Benson Do not Oppose this Fee Suit

A Memorandum Brief has been filed herein by the Department of Justice declaring the Secretaries to be neutral, but that the Government will require proper ac-

quittances from each of the 18 counties. That 17 of the 18 counties are properly before the Court, and will be bound by any decree, is not questioned.

In this connection attention is called to p. 13 of the Joint Appendix, where Co-Appellant Merrick, purporting to act for himself and myself, on April 18, 1955, moved to dismiss as to Clackamas County only, without prejudice, "upon the ground and for the reason that an agreement has been reached with said defendant for the payment of a proportionate part of the fees of plaintiffs involved in this action".

That motion was allowed May 4, 1955.

Perhaps that awkward situation, which I think was a procedural mistake on the part of Mr. Merrick, and not participated in by me, can be cured by this Court's going ahead and declaring a fee, but providing in the decree that the pro rata share of Clackamas County, only 5.92 per cent of the total fee to be allowed, shall not be turned over to Appellants until such time as Clackamas County delivers to the Secretary of the Treasury an unconditional acquittance, based upon an order of its County Court.

It is a foregone conclusion, from the evidence now before this Court, that Clackamas County would cheerfully give such an acquittance. But candor compels me to say that I do not know of any formal agreement, as referred to in Mr. Merrick's motion. Last Summer, while in Oregon briefly, I visited Oregon City, the seat of Clackamas County, and inquired of the members of the County Court as to this phase, and was told that they knew of no formal order of their county court, which can only speak by its records, of such an agreement.

If there is any defect of parties, now, or non-joinder of all necessary parties, as a result of Mr. Merrick's motion, which I did not know of, and therefore could not have approved of, have never ratified, and do not ratify

now, then I would ask that this case be remanded, the order dismissing as to Clackamas County vacated, and that Clackamas County be reinstated as party defendant, and duly served with process accordingly.

But I believe the Court of Appeals can properly proceed to final judgment for appellant, as it surely has the power to do, and it ought to do to save its own time and labors, and expedite justice. Clackamas County has paid me no fee whatsoever, or indicated any willingness to pay me any fee whatsoever, until this case is finally adjudicated, which happy end I hope is near.

Extravagant Statements in "Brief for Appellees Benton County Et Al"

On page 5 of the brief filed by Messrs. Paul R. Connolly and Frank S. Sever, Hogan & Hartson of counsel, is the following statement:

> "The plaintiffs dismissed their action as to Clackamas County on the ground that Clackamas had agreed to pay them a fee. (J. A. 13)."

Merrick's motion, though ill-timed and unauthorized by me, nor would I have permitted it had I been *sui juris*, read entirely different to the foregoing rash statement of counsel. Merrick's motion said "upon the ground and for the reason that an agreement has been reached with said defendant for the payment *of a proportionate part of the fees of plaintiffs involved in this action*".

"Proportionate" part could mean nothing else than *pro rata* share of the total fee due, in equity, from the entire 18 counties.

The testimony before this Court shows that such is in fact the attitude of Clackamas County officials, though I know of no agreement, by court order there, confirming it.

Foot note 4 of opposing counsel's brief is shot through with even greater lack of candor:

> "4. The District Court's memorandum opinion states that the seventeen counties concede that a fee would be appropriate if the litigation instituted by plaintiffs had been productive of the distribution of the fund. *This concession was made for the purposes of the motion only.*"

Would counsel concede as being law, that which was not law, for purposes of a motion only? We don't get it.

Again, counsel's foot note 3, p. 3 of their brief says their action 175-55 pending below is merely to compel distribution of the remaining $800,000 "on the ground that there is no authority for withholding payment". But that is their "amended complaint" filed long after their original complaint of January, 1955, in 175-55, which original complaint asked for the identical relief suit 11844 had granted, and was almost identical with Clackamas County's original suit. When filed no part of the nine million dollar fund had been distributed. Pendente lite checks were sent out to the counties for all but $800,000, still held. Query? Was it not opposing counsel's intention in filing their original complaint in 175-55 to claim at the foot of judgment that *they* had compelled distribution, and that *they* were entitled to a fee for the whole distribution? If Appellants here, are cast out of Court, will *they* not reinstate their original complaint, and yet ask a huge fee out of the remaining $800,000?

On page 5 of their brief counsel make the following astounding statement:

> "Clackamas County, either piqued or prompted by the supposed interests of its attorneys, filed suit attacking the constitutionality of Public Law 426".

That suit, 3939-54 in District Court here, and 12533 in this Court of Appeals, was brought Sept. 16, 1954, by

order entered of record in Clackamas county court, and approved by its District Attorney.

The suit did not attack any portion of Public Law 426, except the solitary subsection thereof transferring the 472,000 acres to the Forest Reserves. It admitted the legality of all parts of Pub. 426 except that one isolated and detached clause. The suit did not, and could not had it prevailed, have any bearing whatsoever with the immediate carrying out of all other portions of Pub. 426, including the immediate distribution of the escrow fund of nine million dollars in question here. See the record in that suit confirming this statement.

Conclusion

I have touched but a few angles of the momentous question of Oregon's special rights in the O & C Land Grant, a checker-board grant of odd-numbered sections 60 miles wide, 300 miles long, running from the Columbia River to the California border, and now worth over two billion dollars. Senator Clinton Anderson testified at the hearings on S. 2225 (Pub. 426) May 4, 1954, that what study he had been able to give the matter when Secretary of Agriculture convinced him that all beneficial interest in the lands undoubtedly "belonged to the people of Oregon." Hearings, p. 12 and 13.

Every Act of Congress to this hour, from 1916, gives Oregon all the income from the lands, except costs "of administration." Is Clackamas County, a sovereign subdivision of Oregon, to be branded as "piqued" for having tried to protect Oregon's every right? And this Court's decision, we submit, in that so-called "sovereign rights" suit (12533) was most helpful, and sympathetic to Oregon. Please see it.

The original O & C Land Grant enforcement litigation, 238 U. S. which please see, was started by me Sept. 16,

1907. Justice McKenna states in the opinion that my suit was filed "a year ahead of the Government suit and that my client was joined in as cross-complainant". The litigation was argued for 3 full days in each of the Courts through which it passed. I participated in all the arguments. Justice McKenna ruled out forfeiture, and held that Congress could legislate further within the framework of no forfeiture. Therefore, when the phrase "revested O & C lands" is used, it does not mean "forfeited" lands, or "re-captured" lands, but does mean "unforfeited" lands, placed in the Interior Department "for administration". "A ministration" over 472,000 acres thereof was yielded to Agricultural Department by an isolated subsection of Pub. 426. Let us hope, notwithstanding, that Congress will continue to vouchsafe to Oregon all the income from these 472,000 acres, save costs of administration. All the O & C lands are in Oregon, total 2.5 million acres. Over 2 million acres thereof are still under Interior Department for administration, and now yielding from timber sales alone over 25 million dollars a year, 75 per cent of which goes to 18 Oregon Counties, to relieve their burdens.

The Forest Service claimed 16 years ago that the 472,000 acres were not O & C lands, but forest reserve lands. This in spite of Judge Wolverton's decision in the case, brought by the Government itself in 1925, to determine just what were and what were not O & C lands. It was this dispute that this Court of Appeals resolved in 11844 in favor of Clackamas and the other 18 Oregon Counties, entitled to 75 per cent of the frozen trust fund if they were O & C lands and only 25 per cent if not. That portion of your decision in 11844 *was not* made "moot", nor was your holding that Secretaries can be sued when they do not perform ministerial acts, as commanded by Congress.

Your Court held 11844 under advisement for 5 months, and your Judges and their law clerks and helpers, per-

formed a mountain of work upon it. Is that work now to go for naught, and held a complete "nullity" as asked by opposing counsel?

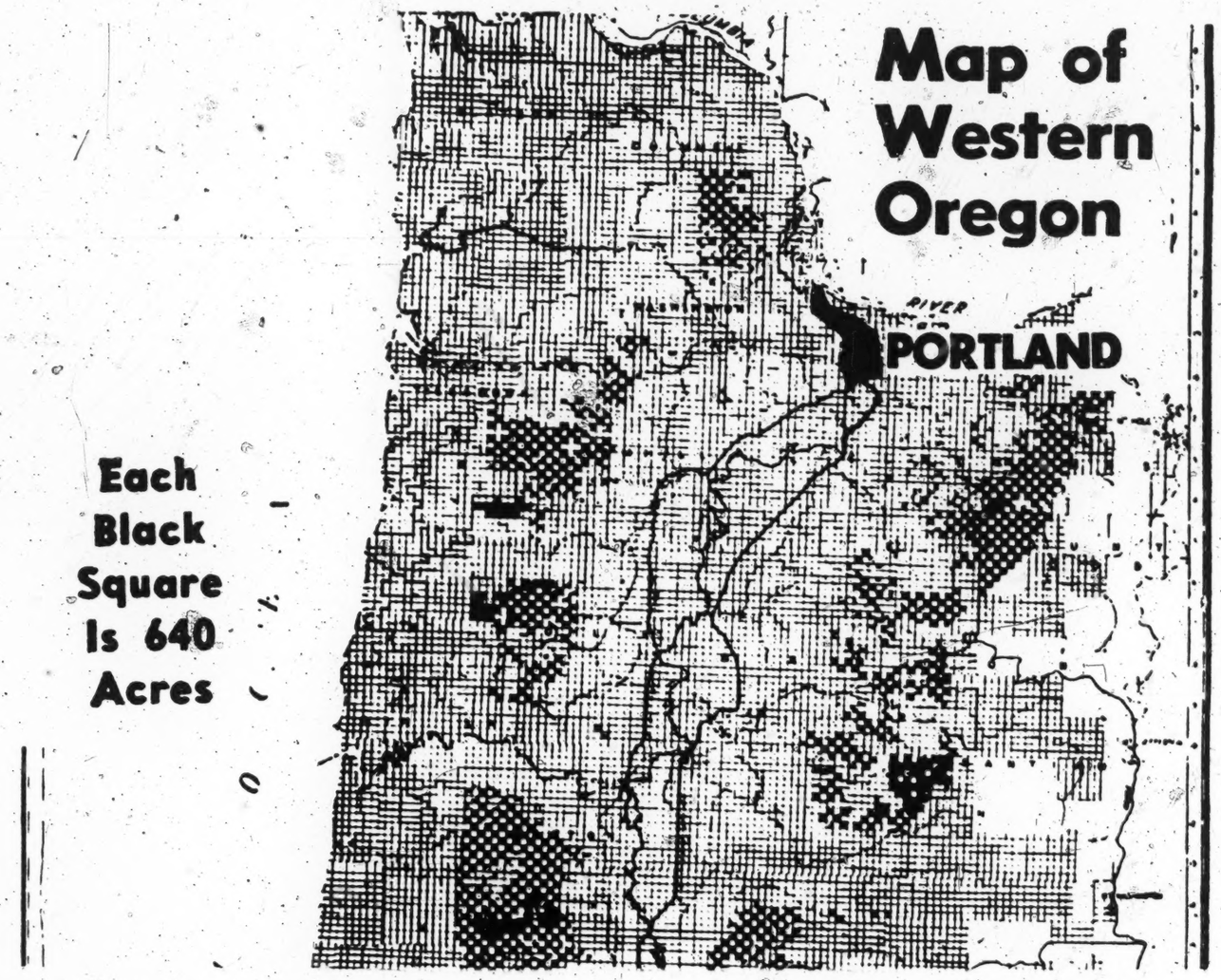
Concluding, I am greatly comforted by the thought that while my efforts are feeble and weak, this suit for compensation is now in the hands of this Court, whose Judges will be able to see the case correcly in all its aspects and future implications to Oregon and the general welfare of the United States.

Respectfully submitted,

A. W. LAFFERTY,
Pro Se.

APPENDIX – D

Map Showing Just Where The O & C Lands are Located In The State of Oregon



The Oregonian

EDITORIAL here reproduced from Editorial Page of the Sunday Oregonian, of Portland, Oregon, of June 30, 1957.

--A. W. LAFFERTY

For Lafferty Settlement

County courts of the 18 western Oregon counties in which Oregon and California grant lands are located would do well, it seems to this page, not to concur in the decision of the executive committee of the O&C Counties Association to take the A. W. Lafferty-Richard L. Merrick legal fee matter to the Supreme Court.

There is considerable basis in fact for the recent Court of Appeals opinion that litigation, which Mr. Lafferty, assisted by Mr. Merrick, undertook on behalf of Clackamas county, hastened the settlement of the long dispute between the Agriculture and Interior Departments over 472,000 acres of forest land. Congress on several occasions had failed to pass bills determining jurisdiction, but acted fast after Lafferty and Merrick won a favorable decision from the Court of Appeals in 1954.

Since the court decision and the action by Congress, some $7,000,000 has been divided among the counties in back revenues on the O&C formula of 75 per cent to the counties and 25 per cent to the federal treasury. If, as the Washington, D. C., court held, Mr. Lafferty and Mr. Merrick helped bring that about, they are entitled to compensation for their efforts.

One must grant that Mr. Lafferty attacked the O&C problem in unorthodox ways, and in opposition to tactics approved by most of the counties. But he remained firm for the 75-25 formula when some others, including Ex-Senator Guy Cordon, were willing to settle for 50-50.

The case has human as well as legal aspects. Mr. Lafferty is old, infirm and almost destitute. If, after further litigation, it should be determined he was, indeed, entitled to a fee and he no longer were here to enjoy it, some Oregonians' consciences might bother them.

Better than fighting the case further in the courts would be an attempt by the counties to arrive at an agreement as to what constitutes a reasonable fee.

Oregon Voter

Economic, Financial, Taxation and Public Affairs Review of Oregon and the Pacific Northwest

43rd Year, No. 29 PORTLAND 5, OREGON, U.S.A. July 20, 1957

Entered as Second Class Matter May 1, 1915, at the Postoffice at Portland, Oregon, U.S.A.

PAY LAFFERTY

The Oregonian's Stand Sound

We commend highly to authorities of the 18 O & C land-grant counties the editorial in *The Oregonian* June 22 "Fee for Mr Lafferty" in which the newspaper made a sound case for the payment of attorney's fees to the former Oregon Representative in Congress A W Lafferty and his associate Richard L Merrick within the $600,000 withheld from the $7,000,000 allocated to the counties when they were legally allowed 75% of the revenues from the controverted O & C lands instead of the 25% they would have received had they been classified as Forest Service lands.

Although the actual classification as O & C lands was ordered by Public Law 426 the history of that controversy shows that it was Mr Lafferty's suit and which he won, that preceded and was pending when Congress acted and except for Mr Lafferty's long and well-informed fight to have it done, it is doubtful there ever would have been the law, under which all O & C counties benefitted.

It is not of consequence now that 17 of the 18 counties in the O & C group did not hire Mr Lafferty to work for the 75% allotment of revenues and, we think mistakenly opposed his effort. Clackamas county stood alone in providing the small but important retainers to Mr Lafferty to get the suit started. Clackamas county furthermore did so against some powerful pressures. But Mr Lafferty was right and although he met rebuff after rebuff he had knowledge of the history of O & C lands such as few others alive had and he won in court. In his late seventies and with most meager resources he fought for Oregon in this and other respects valiantly, until he was threadbare in vitality and resources, and his health impaired. Toward the end of the successful litigation he had the aid of former US Senator Guy Cordon and former Representative Harris Ellsworth, eventually sponsors of the law by which the counties received the 75% instead of the 25%, by statute.

The 17 counties have announced they will carry to the US Supreme Court the decision of the Court of Appeals directing the lower court to determine the fees. Lafferty and Merrick had won in the lower courts the 75% allotment of revenues for the counties but in view of the action of Congress during the litigation the lower court dismissed the action for fees.

The Appellate Court held that passage of the law classifying the lands did not alter the fact that the legal character of the lands was determined by the court, and that the fees were proper.

In human fairness the 17 counties should no longer oppose payment of the fees. All of these counties now receive or have received millions they might never have received except for the Lafferty original action. Classification of the lands became an issue leading to the law because the issue had been raised by Mr Lafferty. He is entitled to the fee in his advanced years and poor health; he needs it and should have it for his work. Likewise Mr Merrick for his.

EDWARD F. COLLADAY
DAVID C. COLLADAY
JAMES R. STONER

COLLADAY & COLLADAY
COUNSELLORS AT LAW
THE SECOND NATIONAL BANK BUILDING
1331-1333 G STREET, NORTHWEST
WASHINGTON 5, D. C.

TELEPHONE
NATIONAL 8-0791

CABLE ADDRESS
COLCOL

June 18, 1957

Honorable A. W. Lafferty
518 H Street, N. W.
Washington 1, D. C.

Dear Mr. Lafferty:

I appreciate very much your sending me a copy of the decision of the United States Court of Appeals for the District of Columbia Circuit decided in your favor on the 13th instant. Please accept my congratulations for your success in this case of such great importance to you.

Sincerely yours,

E. F. Colladay

E. F. Colladay

EFC:alf

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611 OLIVE STREET

ST. LOUIS 1, MISSOURI

MAIN 1-1740

July 1, 1957

Mr. A. W. Lafferty,
518 H Street, N. W.,
Washington 1, D.C.

Dear friend Lafferty:

Please accept my congratulations on the opinion, copy of which you sent me, of the United States Court of Appeals in your case. I do hope you shall soon have collected a fee commensurate with your work and that such fee will be a great comfort to you.

With cordial best wishes and thanking you for your thoughtfulness in sending me said copy, I am

Sincerely yours,

Forrest C. Donnell

LAW OFFICES
BINGHAM, COLLINS, PORTER & KISTLER
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WASHINGTON 5, D. C.

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ROGER ROBB
KENNETH WELLS PARKINSON
EDWIN R. SCHNEIDER, JR.

CABLE ADDRESS
"BINGHAM"

TELEPHONE
DISTRICT 7-2141

June 19, 1957

Honorable A. W. Lafferty
518 H Street, N. W.
Washington 1, D. C.

Dear Mr. Lafferty:

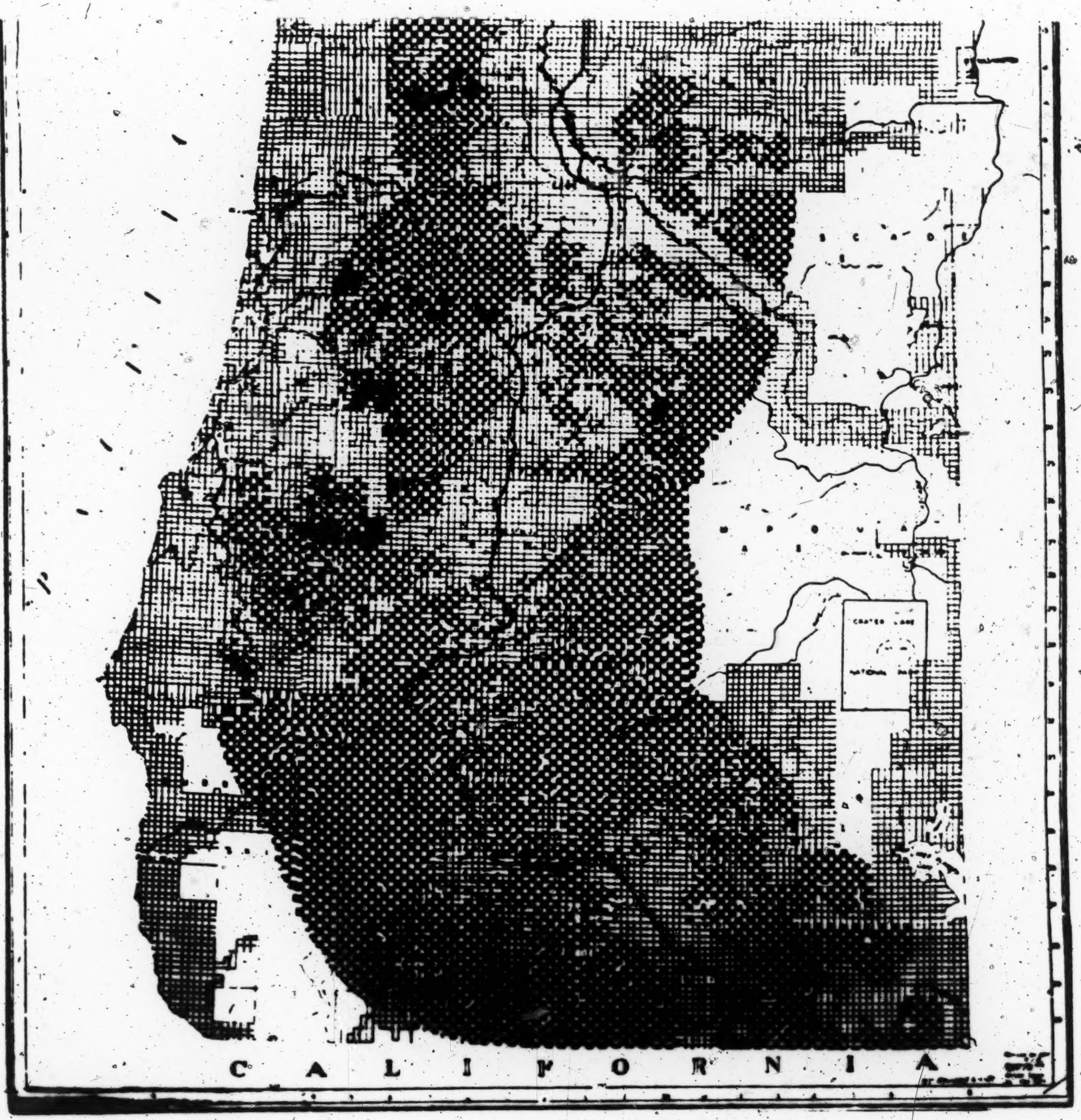
I do not know when I have read anything that has delighted me any more than the decision of the Court of Appeals handed down on June 13, 1957.

This is a perfect example of what perserverance will do and how right will eventually triumph. I certainly hope the Court below will give you an ample and just fee for your life's work. God knows you deserve it.

In the meantime, my heartiest congratulations and best wishes to you.

Sincerely yours,

Linton M. Collins


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TELEPHONE:
NATIONAL 8-3120
EXT. 215

June 24, 1957

Hon. A. W. Lafferty
518 H Street, N.W.
Washington 1, D.C.

Dear Congressman Lafferty:

Much gratified to note the favorable decision handed down June 13 by the Court of Appeals. All is well that ends well.

It is a further exemplification of the old adage "be sure you are right and then go ahead." In this particular case we might also add the injunction of Admiral Farragut "go ahead and damn the torpedoes."

With heartiest congratulations and warmest regards,

Your friend,

Clarence Cannon

CC/dc

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House of Representatives
Committee on Appropriations
Eighty-fifth Congress
Washington, D. C.

June 24, 1957

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Hon. A. W. Lafferty

518 H Street, N.W.

Washington 1, D.C.

Dear Congressman Lafferty:

Much gratified to note the favorable decision handed down June 13 by the Court of Appeals. All is well that ends well.